APPEAL NO. 010489

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 5, 2001. With regard to the unresolved issues, the hearing officer determined that the respondent (claimant) has not reached maximum medical improvement (MMI) and that there is no impairment rating (IR) because the claimant has not reached MMI. The appellant (carrier) appeals, contending that the hearing officer erred in failing to give the initial MMI date and IR findings of the designated doctor (DD) presumptive weight. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury to the lumbar region of the spine on _____. The carrier sent the claimant to see Dr. AC on October 1, 1999. In a report on that date, Dr. AC certified the claimant at MMI on July 25, 1999, and assigned an IR of 1%. Dr. C, the DD, examined the claimant and found MMI on October 19, 1999, and assigned a 4% IR. The Texas Workers' Compensation Commission (Commission) twice asked for clarification from the DD. The first clarification request was on January 25, 2000, when the Commission asked the DD to respond to some points made by the treating doctor, Dr. B. In his response of February 7, 2000, the DD amended the claimant's IR from 4% to 6%. The second time the Commission wrote to the DD requesting clarification of his MMI based on new information that the claimant had been approved for spinal surgery. The DD once again amended his report on November 20, 2000, by rescinding his prior assessment of MMI based on the new information.

In addition to the above stipulated facts, Dr. B testified that he had been trying to get additional diagnostic tests preauthorized. Specifically, he testified that the claimant needed a myelogram to determine what was causing the disc desiccation at L5-S1. Dr. B also testified that the myelogram demonstrated that the claimant needed surgery because his disc was "leaking." When the Commission asked the DD, on November 3, 2000, if the new information would change his opinion, the DD stated "Due to the fact that [claimant] has been approved for spinal surgery, he is not at MMI." The hearing officer determined that "[Dr. C]'s report of November 20, 2000, is entitled to presumptive weight because he is the [DD] and the report was amended within a reasonable amount of time . . . ."

The carrier appeals the hearing officer's decision, claiming that the first MMI date and IR should be afforded presumptive weight. The 1989 Act provides that the DD's report is to be given "presumptive weight, and the Commission shall base its determination of whether the employee has reached MMI on the report unless the great weight of the other evidence is to the contrary." Sections 408.122(c) and 408.125(e).

The Appeals Panel has held that a DD may amend the original report of MMI and IR for various reasons which can include, but are not limited to, the need for surgery. *See* Texas Workers' Compensation Commission Appeal No. 941168, decided October 14, 1994. The report may be amended where there were incomplete or erroneous facts when the first report was rendered that are subsequently taken into account in amending the report. *See* Texas Workers' Compensation Commission Appeal No. 941600, decided January 12, 1995. We have stated that, in cases such as this, where surgery and the amendment of the DD's report takes place before statutory MMI, the hearing officer should consider whether the designated doctor amended his report for a proper purpose and within a reasonable time. *See* Texas Workers' Compensation Appeal No. 002929-S, decided January 22, 2001. Whether a doctor has amended his report for a proper reason and within a reasonable amount of time is essentially a question of fact. Texas Workers' Compensation Commission Appeal No. 960888, decided June 18, 1996.

In making her determination, the hearing officer found that the evidence demonstrated that "all the impairment ratings assigned were done without the knowledge of the subsequently diagnosed herniated disc, which resulted in surgery." The hearing officer further stated that "the report was amended within a reasonable amount of time." The claimant testified that he did not delay his case and that he has cooperated with his doctors. Dr. B testified that any delays were caused by the carrier in refusing to approve diagnostic testing and by requesting a third opinion on the spinal surgery. There was evidence to support the hearing officer's decision that there was a proper purpose for the DD to amend his report and that amendment was done within a reasonable amount of time.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We do not conclude that the hearing officer improperly applied the law to the facts. Her factual determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge